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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,361	07/18/2006	David Ezra	3003-1183	2968

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EXAMINER	
PRITCHETT, JOSHUA L	

ART UNIT	PAPER NUMBER
2872	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/586,361	**Applicant(s)** EZRA, DAVID	
	Examiner JOSHUA L. PRITCHETT	**Art Unit** 2872	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-34*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 9/09
13. ☐ Other: _____.

/Joshua L Pritchett/
Primary Examiner
Art Unit: 2872

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argued the Ishihara reference failed to teach the image varies spatially. The claim language uses the "comprising" transitional phrase which means additional elements may be included into addition to what is specifcally claimed. The Ishihara reference states an LCD spatially modulates an image (para. 0005). The Ishihara diffractive structure may be combined with an LCD (Fig. 29) therefore the Ishihara reference teaches the claimed limitation. Further, the limitation of producing a spatially varying image is a functional limitation. While an applicant is entitled to claim the invention in a number of ways an apparatus claim must distinguish over the prior art based on structural limitations (MPEP 2114). Therefore even if the Ishihara reference is taken to not include spatially varying an image the limitation is not one which may distinguish over the structure of the Ishihara reference. Applicant argues the Ishihara reference fails to teach the local orientation is induced by the micro-relief pattern. The Applicant argues orientation is induced by orientation layer 34. The use of orientation layer 34 does not mean orientation is not induced by the grating pattern 32a of Ishihara. An orienation layer would either enhance the orientation induced by the Ishihara pattern or override the orientation induced by the Ishihara pattern. Ishihara teaches the claimed structure of a micro-relief pattern with an anisotropic optical layer attached thereto. Therefore the micro-relief pattern of Ishihara will be capable of performing all the claimed actions of the claimed micro-relief pattern. Applicant argues the Ishihara reference is unidirectional and therefore does not meet the predetermined spatial distribution limitation. A predetermined spatial distribution does not require two dimensional variation only that whatever distribution is used is determined prior to the application of the anisotropic layer. Applicant argues "respective orientations" requies more than one. Examiner agrees however the phrase does not require the orientations be different from one another. Applicant argues Ishihara states the modulation of polarization is highly undesireable. As stated above the Ishihara reference may be combined with a LCD which may vary the polarization. Applicant argues Ishihara fails to teach the anisotropic layer is fixed. The term "fixed " means securely placed for fastened. The liquid crystal layer 33 of Ishihara is securely placed within the device as shown in Fig. 1. The liquid crystal will not leak out of the devcie and therefore meets the definition of the term fixed. Applicant's interpretation of the term fixed appears to mean the liquid crystal is a solid. This limitation is not required by the claim language. Applicant argues the anisotropic layer of Ishihara does not varying in thickness. The layer 33 of Ishihara has a variable thickness as a result of the grating rides shown in Fig. 1 of Ishihara. Applicant argues Ishihara fails to teacha polymerisable liquid crystalline material. Ishihara teaches the liquid crystal is made of nematic or smectic liquid crystal. Both nematic and smectic liquid crystals are capable of polymerization. Applicant argues Ishihara fails to teach the anisotropic layer remains anisotropic. Ishihara states the liquid crystal layer is anisotropic (para. 0087).